



MONTANA DISTRICT COUNCIL OF LABORERS

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SDMS Document ID



2030996

May 4, 2004

Administrator
Research and Special Programs Administration
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20490

Re: APPEAL OF FREEDOM OF INFORMATION REQUEST –
FOIA Control No. 0422

Dear Sir or Madam:

This will appeal the denial of information requested by me under the Freedom of Information Act and agency regulations. My letter of request, sent on March 3, 2004, sought certified payroll information submitted by Salut, Macor and Environmental Restoration, Inc. pursuant to the Davis-Bacon Act. My request was denied by Andrea Griswold, Volpe Center, FOIA Officer, on April 15, 2004. A copy of the denial letter is attached.

In that letter, Ms. Griswold invoked the exemption for confidential business information and concluded that access would be denied to those materials. The exemption does not properly apply.

The wage rates paid to employees on the project are set by the Wage Determinations issued by the Department of Labor pursuant to the Davis-Bacon Act. These rates must even be posted on the jobsites. The payment of these rates must then be confirmed by the employer in the form of the certified payroll. Thus, the wage rates themselves are not "confidential information." The only open question is whether the contractor actually complied with its statutory obligation to pay these rates. I assume that it did. My principal purpose in seeking confirmation that these rates were paid is to establish to the satisfaction of the federal and Montana Departments of Labor that these wage rates continue to prevail for this type of work. If necessary, I will agree not to use the payroll information for any competitive purpose. However, it seems clear that the information is not entitled to any protection under FOIA.

As far as I am aware, Courts that have upheld the withholding of certified payrolls have done so only on the ground that names and addresses are entitled to protection under the privacy exemption to FOIA. See, e.g., SMWIA, Local Union No. 19, 135 F.3d 891 (3d Cir. 1998); Hopkins v. U.S. Dept. of Housing and Urban Development, 929 F.2d 81 (2d Cir. 1991). I am not

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interested in the names, addresses and social security information contained in the payroll records. That information can be redacted. *See, e.g., Sheet Metal Workers International Association v. U.S. Air Force*, 63 F.3d 994 (10th Cir. 1995).

Because the Freedom of Information Act exemptions do not cover the requested material, I request that the agency review the record and order the documents to be disclosed to me. Pursuant to the Act's requirements on administrative appeals, I request a response to this appeal within twenty working days.

Sincerely,

A handwritten signature in cursive script that reads "Randy Siemers".

Randy Siemers
P.O. Box 6382
Helena, Montana 59604

enc.